

Mandatory Minimum for Subsequent Sex Offenders

Minnesota Sentencing Guidelines Commission

February 21, 2013

Background

A 36-month mandatory minimum sentence for subsequent sex offenders was repealed by the 2006 Legislature (MN Session Laws, [2006 c 260 art 1 s 48](#)). The mandatory minimum was previously located in [Minn. Stat. § 609.109, subd. 2 \(2005\)](#). The repeal is believed to be inadvertent, occurring while the Legislature created life sentences for some sex offenders and re-codified the statute that enhanced sentences for repeat sex offenders into a new statute (Minn. Stat. § [609.3455](#)).

The Commission adopted a Sex Offender Grid and enhanced policies for sex offenders, effective August 1, 2006. One of the Commission's primary goals was to increase public safety by imposing harsher sentences on repeat sex offenders. That was accomplished by increasing the weights assigned to the most serious prior first- and second-degree offenses and by assigning a second custody status point to a sex offender if their current offense was committed while on probation or supervised release for a previous criminal sexual conduct offense.

The Commission made changes to its policies assuming that the mandatory minimum existed and that subsequent sex offenders would receive a recommended prison sentence either because of the Commission's enhanced policies for sex offenders which would put them over the dispositional line on the Sex Offender Grid or because of the statutory mandatory minimum. However, this was no longer true after the statute was repealed in 2006.

Subsequent Sex Offenders Not Covered by the Mandatory Minimum

According to MSGC Monitoring Data, there were 9 subsequent sex offenders sentenced between 2009 and 2011, who were not recommended prison under the Guidelines, but who would have been subject to the mandatory minimum if it were not repealed. In 1 case, the offender was sentenced to prison through an aggravated dispositional departure. The remaining 8 offenders had presumptive stayed dispositions with the following severity levels and criminal history Score (CHS) information:

**Table 1. Subsequent Sex Offenders, Presumptive Disposition "Stay"
(Sentenced 2009-2011)**

Offense	Conviction Statute	Severity Level	CHS	Prior Crim. Sex. Offense (Disp. Date)	Custody Status Point	Presumptive Sentence
2 nd Degree	609.343 s. 1(a)	D	1.5	2 nd Degree	No	Stay, 48 mos.
2 nd Degree	609.343 s. 1(a)	D	1.5	Att. 2 nd Degree	No	Stay, 48 mos.
2 nd Degree	609.343 s. 1(b)	D	1.0	3 rd Degree	No	Stay, 48 mos.
3 rd Degree	609.344 s. 1(b)	D	1.5	2 nd Degree	No	Stay, 48 mos.
3 rd Degree	609.344 s. 1(b)	D	1.5	3 rd Degree	No	Stay, 48 mos.
Att. 4 th Degree	609.345 s. 1(d)	E	1.5	4 th Degree	No	Stay, 18 mos.
4 th Degree	609.345 s. 1(e)	F	1.5	2 nd Degree	No	Stay, 27 mos.
4 th Degree	609.345 s. 1(f)	F	1.5	2 nd Degree	No	Stay, 27 mos.

Legislation to Reinstate the Mandatory Minimum

Legislative bills that would reinstate the mandatory minimum have been introduced since the repeal, most recently in 2011 ([Senate File 415](#)). At that time, Commission staff prepared a fiscal note and estimated a need for an additional 6 prison beds each year ([Consolidated Fiscal Note; 2011-12 Legislative Session, S.F. 415](#)).

Updated Impact on State and Local Correctional Resources

If a bill was passed that reinstated the mandatory minimum for subsequent criminal sexual conduct offenses, it is assumed that 3 additional offenders a year would receive executed prison sentences. The projected prison bed impact would be 6.5 beds each year.

Because there is sometimes a delay in reporting and processing sex offender cases, it is unlikely that there will be 3 new offenders sentenced each year until FY 2015. Two beds will be needed in FY 2014, 5 beds in FY 2015, and 6.5 beds every year after that. MSGC monitoring data shows that, in the years when the provision was in effect, the court did not impose a prison sentence upon repeat offenders in about 15 percent of cases. Therefore, in some years it may be possible that not every offender who qualifies for the mandatory minimum would be sentenced to prison.

Seven of the 8 offenders who received probation for subsequent sex offenses in these years had local jail time pronounced as a condition of probation, with an average duration of 215 days (serve two-thirds or 144 days). Therefore, reinstating the mandatory minimum could result in minimal savings for local jails and probation supervision costs.

Options for Consideration

Possible options for consideration could be:

- (1) Do nothing. Although this mandatory minimum sentence may have been eliminated inadvertently, the Legislature has had ample opportunity to act.
- (2) Bring the issue to the attention of the Legislature. The error occurred during a budget crisis, and the bed impact may have dissuaded the Legislature from action in the past. The issue may have fallen off the radar in the interim.
- (3) Amend the Guidelines so that a subsequent sex offense is a presumptive prison sentence even if it falls within the shaded area of the Grid. This would be similar in approach to how a subsequent burglary of an occupied dwelling is handled under Minn. Sentencing Guidelines § 2.C.3.b.

Table 2. Sex Offender Grid, Effective August 1, 2012

		CRIMINAL HISTORY SCORE						
SEVERITY LEVEL OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or More
CSC 1 st Degree	A	144 144-172	156 144-187	168 144-201	180 153-216	234 199-280	306 261-360	360 306-360 ²
CSC 2 nd Degree— (c)(d)(e)(f)(h) Prostitution; Sex Trafficking ³ 1 st Degree—1(a)	B	90 90 ³ -108	110 94-132	130 111-156	150 128-180	195 166-234	255 217-300	300 255-300 ²
CSC 3 rd Degree—(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Prostitution; Sex Trafficking 2 nd Degree—1a	C	48 41-57	62 53-74	76 65-91	90 77-108	117 100-140	153 131-180	180 153-180 ²
CSC 2 nd Degree—(a)(b)(g) CSC 3 rd Degree—(a)(b) ² (e)(f) Dissemination of Child Pornography (Subsequent or by Predatory Offender)	D	36	48	60 51-72	70 60-84	91 78-109	119 102-142	140 119-168
CSC 4 th Degree—(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography ²	E	24	36	48	60 51-72	78 67-93	102 87-120	120 102-120 ²
CSC 4 th Degree— (a)(b)(e)(f) Possession of Child Pornography (Subsequent or by Predatory Offender)	F	18	27	36	45 39-54	59 51-70	77 66-92	84 72-100
CSC 5 th Degree Indecent Exposure Possession of Child Pornography Solicit Children for Sexual Conduct ²	G	15	20	25	30	39 34-46	51 44-60	60 51-60 ²
Registration Of Predatory Offenders	H	12 ¹ 12 ¹ -14	14 12 ¹ -16	16 14-19	18 16-21	24 21-28	30 26-36	36 31-43